

1986

The State of Utah v. James Hill and Larry Hill : Opening Brief for Defendants

Utah Supreme Court

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Ross C. Blackham; Attorneys for Plaintiff/Respondents.

Harrison R. Winston; Steven R. Bailey; Attorney for Defendant/Appellant.

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BRIEF

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IN THE SUPREME COURT OF THE STATE OF UTAH

1986 20978

No. 20978

THE STATE OF UTAH,
Plaintiff and Respondent,

vs.

JAMES HILL and LARRY HILL,
Defendants and Appellants,

OPENING BRIEF FOR DEFENDANTS

APPEAL FROM THE SIXTH JUDICIAL DISTRICT
OF SANPETE COUNTY, UTAH

THE HONORABLE DON V. TIBBS, JUDGE

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FILED
JAN 17 1986

Clerk, Supreme Court, Utah

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Attorney for Plaintiff-Respondent

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NATURE OF THE CASE

This is an appeal from a judgment of conviction out of the 6th Judicial District of Sanpete County, Utah, after a jury trial of Burglary in the Third Degree and Theft in the Second Degree as to Defendant, James Leander Hill, hereinafter referred to as James Hill, and a conviction of Theft in the Second Degree as to Defendant, Larry Hill.

RELIEF SOUGHT ON APPEAL

Defendants request a reversal of the judgments of conviction against them and dismissal of the charges.

STATEMENT OF ISSUES PRESENTED FOR REVIEW

ISSUE NO. 1: Is there sufficient evidence to sustain a jury verdict finding Defendant James Hill guilty of Theft in the Second Degree and Burglary in the Third Degree?

ISSUE NO. 2: Is there sufficient evidence to sustain a jury verdict of guilty of Theft in the Second Degree as to Defendant Larry Hill?

ISSUE NO. 3: Did the lower Court err in failing to grant Defendants motion for a directed verdict and dismissal of the charges of burglary? (Tr.216)

ISSUE NO. 4: Did the trial Court err and abuse it's discretion in giving instructions numbers 9 and 16 to the jury? (Tr.216,218)

ISSUE NO. 5: Was there a jury question as to

whether or not Defendants gave a satisfactory explanation of their possession of recently stolen goods?

STATEMENT OF FACTS

Defendants, James Hill and Larry Hill, were visiting relatives, known to the victim (Tr.129), in Mt. Pleasant, Utah on June 29, 1984. James Hill is the owner of an upholstery and antique store in Canyonville, Oregon. Larry Hill is James Hill's son.(Tr.86) In the company of some small neices and nephews, Defendants shopped in the Mt. Pleasant Antique Shop in Mt. Pleasant, Utah, in the late afternoon of June 29, 1984, (Tr.85) at which time Defendant James Hill looked at items for sale and made inquiries as to whether the owners had, or could obtain, "duck stamps". (Tr.92) No purchases were made. James Hill was known to the store owner by previous visits to the store. (Tr.99) Defendant James Hill left his name and address with the owner in case the owners came upon any "duck stamps". The antique shop was burglarized about midnight (Tr.188) that night by a man, unknown to Defendants. Part of the loot, chairs, were taken to Dave Hill's house in Mt. Pleasant by an informant, Bruce Black, and his wife Vicki Black and the chairs were loaded in Defendant James Hill's van.(Tr.188) The other loot was kept by the alleged burglar.(Tr.189) Some of it was later recovered from a man named Jay Mower who purchased it on July 4, 1984 from Bruce Black and Dave Hall, the burglar, in Ephraim, Utah.(Tr.173,189-190) Defendant James Hill obtained a bill of sale for the furniture

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in his and Larry's possession signed by Bruce Black's wife. (Tr. 139,148,150) The only antique, a rocking chair, had never been removed from Defendant James Hill's van. Two of the captains chairs were in a house on the James Hill property where Larry lived. At the conclusion of the States case in chief, defendants rested their case and moved for a directed verdict of acquittal as to the burglary charges. (Tr. 216)

SUMMARY OF ARGUMENT

1. That there is insufficient evidence to sustain the jury verdicts of guilty of Burglary in the Third Degree and Theft in the Second Degree:

a. On the ground that there was no evidence to sustain the burglary conviction against Defendant James Hill.

b. On the ground that a presumption of guilt can not be inferred from possession of recently stolen property where a satisfactory explanation of the possession was given and there was no other inculpatory or incriminating evidence.

2. That a conviction of Theft in the Second Degree as to either Defendant can not be sustained due to failure of proof that the value of property attributable to any act of Defendants was over \$1,000.00.

3. That the Court should have granted a motion for directed verdict as to the burglary charge.

4. That erroneously submitting a burglary charge to the jury substantially prejudiced the Defendants defenses on the charges of Theft in the Second Degree, causing the

jury to guess and speculate, to arrive at a verdict of Theft in the Second Degree.

5. That Defendants are both innocent of any crime as charged.

ARGUMENT

On Issue Nos. 1 and 2: Utah Law requires that the crime of Theft in the Second Degree is punishable, as such only if the property value exceeds \$1,000.00. The Utah Statute 76-6-412 reads as follows:

"76-6-412. Theft--Classification of offenses. (1) Theft of property and services as provided in this chapter shall be punishable as follows:

(a) As a felony of second degree if:

(i) The value of the property or services exceeds \$1,000.00;"

In this case the judgment of conviction of Theft in the Second Degree can not stand because the best evidence in the case was that the value of the property found in possession of Defendants did not exceed \$415.00 in value. (Tr.156,163)

This is not to admit that the theft conviction as to the theft charges can be sustained in any event.

The evidence against Defendants convicting them of a felony would have to be sustained if at all on the Utah Statute on a presumption as set forth in Utah Code 76-6-402 as follows:

"76-6-408. Receiving stolen property. (1) A person commits theft if he receives, retains, or disposes of the property of another knowing that it has been stolen, or believing that it probably has been stolen, or who con-

ceals, sells, withholds or aids in concealing, selling or withholding any such property from the owner, knowing the property to be stolen, with a purpose to deprive the owner thereof.

(2) The knowledge or belief required for paragraph (1) is presumed in the case of an actor who:

(a) Is found in possession or control of other property stolen on a separate occasion; or

(b) Has received other stolen property within the year preceding the receiving offenses charged;"

We recognize that the Appellate Court will not review the evidence other than to determine it's legal sufficiency, absent a showing that it could not reasonably support a conviction. State vs. Kirkman, 20 Utah 2d 44, 432 P.2d 638. State vs. Nulls, 530 P.2d 1272 (1935). State vs. Allgood, 28 Utah 2d 119, 499 P.2d 269. State vs. Jolley, (1977) 571 P.2d 582.

The Utah Courts have consistently held that possession of recently stolen articles, unless coupled with circumstances inconsistent with innocence or with other inculpatory or incriminating circumstances does not justify submission of a case to jury and is insufficient to support conviction. State vs. Thomas, Utah 244 P.2d 653.

In all of the Utah cases we can find where conviction has been sustained by reason of possession of recently stolen goods, there was either no explanation given, or the Defendant gave an obviously false explanation, and in every case there was other substantial evidence of participation in the theft or burglary inconsistent with innocence. Here Defendants are innocent of any wrong doing. There was a

clear and consistent explanation given the police as to why the Defendants had possession of the chairs. With this information the State would have had burden of proof to contest the reasonable explanation given, but made no effort to do so. Larry did nothing but the bidding of his father who explained that his possession of the property was because he bought it.(Tr.150) There was no other evidence from which it could be reasonably inferred that his father was guilty of burglary or of theft by receiving. The evidence can not reasonably support the conviction of Defendants of Theft in the Second Degree. There was substantial evidence from police investigation and statement of Bruce Black that James Hill had no connection with the burglary, (Tr.192) there is no evidence to sustain the convictions.

Argument on Issue Nos. 3 and 4: At the close of States case the following motions was made:

"MR. WINSTON: Well, we did have an objection to former No. 3, which is now 16. All right. We have an objection to the No. 16 upon the grounds that there should be no instructions given at all on the subject burglary because there's no evidence of burglary to which a Jury could find these Defendants guilty of burglary whatsoever, and that would apply to No. 16 and any other of the instructions. No. 9, we object to it on that ground, to No. 9; let's see if there's any other burglary instructions. Yes. That's my instruction.

Now I have another motion I want to make for the record.

THE COURT: Go ahead.

MR. WINSTON: We move that the charge of burglary be dismissed by the Court and taken away from the Jury upon the grounds that the State has failed to prove any of the material elements of the crime burglary as applied to these Defendants. We move

that the Court direct the Jury to find the Defendants innocent of the crime of burglary as charged in the indictment.

THE COURT: Motion's denied. Anything else?"
(Tr.216)

Our argument is simply that if there was no evidence from which the jury could find either Defendant guilty of a charge of burglary, it was an abuse of discretion and prejudicial error to submit the burglary instructions to the jury. This allowed the jury to speculate on what was burglarized as to the theft charges in that if they found Defendants guilty of the charge of burglary they of course could infer that Defendants stole all the lost property from the victim and in such case the jury had no problem of determining a value over \$1,000.00. By erroneously submitting the charges of burglary to the jury, it severely prejudiced the Defendants defenses to the theft charges. The evidence only indicated a possible theft by receiving, if any crime at all was committed. It is not reasonable to infer burglary from evidence Defendants were in a place of business during business hours shopping and the business was burglarized by someone else, unknown and unconnected in any way to Defendants according to the record.(Tr.86,190)

Argument to Issue No. 5: "a satisfactory explanation" of possession of recently stolen goods is to be measured in the light of all the surrounding circumstances and other evidence in the case. State vs. Thomas, 244 P.2d 653.

In the Thomas, supra case, the Defendant claimed a

friend came over and handed him the stolen goods. The Court said this could be considered a satisfactory explanation, but the Court found much evidence indicating the explanation was inconsistent with the facts incriminating the Defendant and that by reason thereof it became a jury question. In the case of Defendants Hill no such other evidence incriminating the Hills exists and the explanation given in the absence of such other evidence of guilt makes it a satisfactory explanation as a matter of law as offered as opposed to the factual situation in State vs. Thomas, supra.


CONCLUSION

Defendants are innocent of any crime or wrong doing. Defendant James Hill has been convicted in the case of Burglary in the Third Degree with no sufficient evidence to sustain the verdict. Submitting a charge like this to a jury without sufficient evidence is an error. The jury could only have convicted the Defendants as an aider and abetter, but there is no evidence of any contact or acquaintance with the burglar, or any evidence of aiding and abetting a burglary. A wrongful verdict like this can only be rationalized by reason of jury sympathy for a large financial loss of the victim, a local merchant, against a responsible Oregon merchant, a customer of the victim on this and other occasions, who left his name and address with the victim for the victim to contact him in event the victim turned up items the customer might be interested in

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buying in the future. All the Defendants actions following the accusations are consistent with innocence. The burglary conviction should be reversed. The convictions of Defendants, James L. Hill and his son, Larry Hill, can not be sustained by the evidence. The convictions should be reversed and these innocent Defendants absolved of the charges brought against them.

Respectfully submitted,


HARRISON R. WINSTON
Of Attorney for Appellants

Sanpete County Attorney
Bank of Ephraim Building
Ephraim, Utah 84627

Telephone: 283-4646

FILED

SANPETE COUNTY, UTAH

IN THE SIXTH JUDICIAL DISTRICT COURT IN AND FOR SANPETE COUNTY
STATE OF UTAH

THE STATE OF UTAH,

Plaintiff

vs.

JAMES HILL and LARRY HILL

Defendant

* CLERK DEPUTY

* I N F O R M A T I O N

* Criminal No. 1419

The Defendants herein, James Hill and Larry Hill, having been duly bound over to this Court by Louis G. Tervort, Judge of the Tenth Circuit Court, in and for Sanpete County, State of Utah, pursuant to Defendants, by and through their Attorney, Harrison R. Winston, waiving their right to preliminary hearing, the Defendants not having been personally present in Court, but their Affidavit having been read by the Court and accepted thereby.

NOW, THEREFORE, Ross C. Blackham, Sanpete County Attorney, accuses the Defendants of the following:

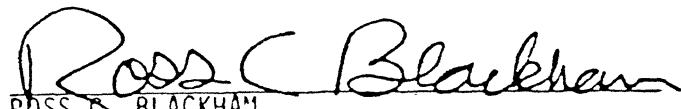
COUNT I - BURGLARY, a Third Degree Felony, contrary to Utah Code Annotated, 1953, Section 76-6-202 and charges that on or about June 30, 1984, at Mt. Pleasant, Utah, Defendants did enter or remain unlawfully in a building, to-wit: the Mt. Pleasant Antique Shop, with intent to commit a theft;

COUNT II - THEFT, a Second Degree Felony, contrary to Utah Code Annotated, 1953, Section 76-6-404 and Section 76-6-412, and charges that on or about June 30, 1984, at Mt. Pleasant, Utah, Defendants did obtain or exercise unauthorized control over the property of another with a purpose to deprive him thereof, to-wit: antique furniture and home furnishings belonging to Mt. Pleasant Antique Shop in Mt. Pleasant, Utah, having a value in excess of \$1,000.00.

In violation of law and against the peace and dignity of the State of Utah.

This Information is based on evidence obtained from the following witnesses:
John P. Christensen, Sergeant Haynell, Sue Sego and Verl Simmons.

DATED this 9th day of October, 1984.


ROSS C. BLACKHAM
Sanpete County Attorney

ROSS C. BLACKHAM
SANPETE COUNTY ATTORNEY
Sanpete County Courthouse
Manti, Utah 84642

IN THE SIXTH JUDICIAL DISTRICT COURT OF SANPETE COUNTY
STATE OF UTAH

THE STATE OF UTAH,)	
Plaintiff)	
vs.)	JUDGMENT AND ORDER
LARRY JAMES HILL)	Criminal No. 1419
Defendant)	

On the 1st day of October, 1935, before the Honorable Don V. Tibbs, appeared Ross C. Blackham, Sanpete County Attorney, for the State of Utah, and the Defendant was personally present in Court and represented by counsel, Keith E. Murray.

The Court having asked if the Defendant has anything to say why Judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court;

IT IS ADJUDGED that the Defendant is guilty of Theft, a Second Degree Felony, pursuant to Utah Code Annotated, Section 76-6-404 and 76-6-412, 1953, as amended.

IT IS ADJUDGED that Defendant be confined and imprisoned in the Utah State Prison for a term not less than one year nor more than 15 years and is fined the sum of \$10,000.00.

IT IS ADJUDGED that Defendant is granted a stay of execution of the above sentence and all but \$1,500.00 of the fine is suspended, and the Defendant is hereby placed on probation for a period of 18 months, to commence after the Defendant is released from any jail time he may serve, and Defendant shall comply with the following terms and conditions:

1. Defendant shall serve one year in the Sanpete County Jail with the Court reserving jurisdiction to review this matter after the Defendant has actually served 60 days in the Sanpete County Jail.

2. That Defendant shall enter into an agreement with the Department of Adult Probation and Parole and shall strictly comply with the terms and conditions thereof.

3. That Defendant shall pay the remaining \$1,500.00 of the fine in payments to be determined by Adult Probation and Parole.

4. That pursuant to Section 76-3-201(3), Utah Code Annotated, Defendant is ordered to make restitution to the victim of this offense, Mt. Pleasant Antique Shop, in the amount of \$1,878.00 and Defendant shall be given credit for any restitution paid by the co-defendant in this case.

5. Defendant shall report to the Sanpete County Sheriff on October 17, 1985, at the hour of 10:00 a.m. to begin serving his jail sentence.

DATED this 1st day of October, 1985.

BY THE COURT:

s/ Don V. Tibbs

DON V. TIBBS
DISTRICT COURT JUDGE

I hereby certify that I mailed a true and correct copy of the foregoing Judgment and Order to Harrison R. Winston, Attorney for Defendant, at P.O. Box 2220, Roseburg, Oregon 97470, this 11th day of October, 1985, postage prepaid.

Torie L. Hales
Torie L. Hales

ROSS C. BLACKHAM
SANPETE COUNTY ATTORNEY
Sanpete County Courthouse
Manti, Utah 84642

IN THE SIXTH JUDICIAL DISTRICT COURT OF SANPETE COUNTY
STATE OF Utah

THE STATE OF UTAH)	
Plaintiff)	
vs.)	JUGMENT AND ORDER
JAMES LEANDER HILL)	Criminal No. 1419
Defendant)	

On the 1st day of October, 1985, before the Honorable Don V. Tibbs appeared Ross C. Blackham, Sanpete County Attorney, for the State of Utah, and the Defendant was personally present in Court and represented by counsel, Keith E. Murray.

The Court having asked if the Defendant has anything to say why Judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court;

IT IS ADJUDGED that the Defendant is guilty of Theft, a Second Degree Felony, pursuant to Utah Code Annotated, Section 76-6-404 and 76-6-412, 1953, as amended, and is guilty of Burglary, a Third Degree Felony, pursuant to Utah Code Annotated, Section 76-6-202, 1953, as amended.

IT IS ADJUDGED that, on the Burglary conviction, Defendant be confined and imprisoned in the Utah State Prison for a term not to exceed 5 years and is fined the sum of \$5,000.

IT IS ADJUDGED that, on the Theft conviction, Defendant be confined and imprisoned in the Utah State prison for a term of not less than one year nor more than 15 years and is fined the sum of \$10,000.00.

IT IS ADJUDGED that Defendant is granted a stay of execution of the above sentences and all but \$2,500.00 of the fines is suspended, and the Defendant is

JUDGMENT AND ORDER
State of Utah vs. James Hill
Criminal No. 1419
Page 2

hereby placed on probation for a period of 18 months, to commence after the Defendant is released from any jail time he may serve, and Defendant shall comply with the following terms and conditions:

1. Defendant shall serve one year in the Sanpete County Jail on each of the counts on which he has been convicted; which sentences shall run concurrently; with the Court reserving the jurisdiction to review this matter after the Defendant has actually served 90 days in the Sanpete County Jail.
 2. That Defendant shall enter into an agreement with the Department of Adult Probation and Parole and shall strictly comply with the terms and conditions thereof.
 3. That Defendant shall pay the remaining fine of \$2,500.00 in payments as determined by Adult Probation and Parole.
 4. That pursuant to Section 76-3-201(3), Utah Code Annotated, Defendant is ordered to make restitution to the victim of this offense, Mt. Pleasant Antique Shop in the amount of \$1,878.00, and Defendant shall be given credit for any restitution paid by the co-defendant in this case.
 5. Defendant shall report to the Sanpete County Sheriff on October 17, 1985, at the hour of 10:00 a.m. to begin serving his jail sentence.
- DATED this 12 day of October, 1985.

BY THE COURT:

/s/ DON V. TIBBS
DON V. TIBBS
DISTRICT COURT JUDGE

JUDGMENT AND ORDER
State of Utah vs. James Hill
Criminal No. 1419
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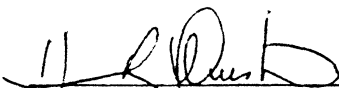
I hereby certify that I mailed a true and correct copy of the foregoing
Judgment and Order to Defendant's attorney, Harrison R. Winston, P.O. Box
2220 Roseburg, Oregon 97470, this 11th day of October, 1985, postage prepaid.



Torie L. Hales

CERTIFICATE OF MAILING

I certify that I served the foregoing Opening Brief for Defendants on Ross C. Blackham by depositing four true, full and exact copies thereof in the United States Post Office at Roseburg, Oregon on January 15th, 1986, enclosed in a sealed envelope, with postage paid, addressed to Ross C. Blackham, Sanpete County Attorney, Sanpete County Courthouse, Manti, Utah, 84642.


HARRISON R. WINSTON,
Of Attorneys for Appellants